IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17625 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAGHABHAI MATHURBHAI AHIR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17625 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

RULE SERVED for Respondent No. 1,2

MS M S PANCHAL AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 10/03/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside order dated 22/09/03 passed by respondent no.2, directing the detention of the present petitioner u/s.3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act") on the ground that the petitioner was involved in two criminal offences punishable u/s.392 read with s.114 IPC registered with D.C.B. Police Station C.R.No.50 of 2003 and 51 of 2003 on 24/07/03 and 13/07/03 involving cash of Rs.500/- and Rs.2200/- respectively.

2. Moreover, there were a couple of statements of unnamed witnesses in support of the said order. The petitioner has contended that he was not a "dangerous person" and his activities were not likely to commit violation of public order, and therefore, there was no necessity for detaining him. That, therefore, the order of detention, referred to above and impugned in this petition, is illegal. The petitioner has, therefore, prayed that the present petition be allowed and the above detention order be quashed and set aside.

3. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.M S Panchal learned AGP appears on behalf of the State. I have heard the learned advocate for the petitioner and the learned AGP for the State.

4. During the course of hearing, the learned advocate for the petitioner has submitted that the petitioner was allegedly involved in the aforesaid two offences along with one Bhavan alias Bhavan Dadhi Mathurbhai Hadiya and that even the statements of unnamed witnesses referred the petitioner as well as the said person. That, therefore, the case of the petitioner is on par with the case of the said person.

5. The learned advocate for the petitioner has contended that the said person was detained by the said authority on account of his involvement in the said two offences and on the strength of the statements of the said two unnamed witnesses. That, therefore also, the case of the petitioner is on par with the case of the said person.

6. It has also been contended that the said person had preferred S.C.A.No.15741/2003 and by an order dated 04/12/03, this Court (Hon'ble Mr.Justice A.L.Dave) had considered the pros and cons of the case and thereafter,

found that the order of detention against the said person was not in accordance with law. The learned advocate has also shown me a copy of the said judgment. In para 7 of the said judgment, this Court has observed as follows;

> "The satisfaction regarding disturbance to public order also does not seem to be well founded. The registered cases are all theft cases and they do not indicate anything to support disturbance to public order. The subjective satisfaction arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law on aspect of disturbance to public order as distinct from law and order. The petition, therefore, deserves to be allowed."

7. On hearing, it is found that the petitioner as well as the said person, both were involved in the same offences. The statements of unnamed witnesses also refer the petitioner as well as the said person jointly. Therefore, it is amply clear that the case of the petitioner is on par with the case of the said person. Therefore, when the detention of the said person was held to be illegal, there is no room or scope for deferring from the view adopted in the said matter by this Court. In other words, when the detention order has been held to be illegal with respect to the said person, the detention order with respect to the present petitioner has to be held to be illegal on the said set of reasonings.

8. In that view of the matter, the present petition is allowed. The impugned order of detention dated 22/09/03 passed by respondent no.2 herein is hereby quashed and set aside. The detenue, namely Maghabhai Mathurbhai Ahir, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute. There shall be no orders as to costs. Direct service permitted.

(D. P. Buch, J.)

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